

JASON A. REDON
jasonredon@me.com
 1644 Calle De La Flor
 Chula Vista, CA 91913
 (619) 203-5378

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

Jason A. Redon	Case No: 13cv1765 WQH(KSC)
Plaintiff,	Title: MEMORANDUM OF LAW AND
vs.	CONTENTIONS OF FACT
ANDRES RUIZ #6608, San Diego Police Officer,	Judge: Hon. William Q. Hayes
Defendants.	Magistrate: Hon. Karen S. Crawford
	Date: Friday, August 11, 2017
	Court Room: 14B

MEMORANDUM OF LAW AND CONTENTIONS OF FACT

Plaintiff, JASON A. REDON, submits the following Memorandum of Contentions of Fact and Law in compliance with Local Rule 16.3 of the Federal Rules of Court for the Southern District of California .



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TABLE OF AUTHORITIES

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UNITED STATES CODE:

42 U.S.C. § 1983	6, 7, 8
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UNITED STATES CONSTITUTION:

4th Amendment	9
14th Amendment	9



FACTUAL CONTENTIONS

Statement of Facts:

The Plaintiff in this action is JASON A. REDON.

The Defendant in this action is ANDRES RUIZ.

There exists considerable factual contentions between Defendant and Plaintiff. The Defendants current version of events, differs significantly from both his own, and Officer Jordans, previous testimony and police reports.

On the night of August 19th, 2011 Officer Ruiz was dispatched to the Plaintiff's residence on suspicion of a domestic altercation between Plaintiff and his wife. When Officer Ruiz arrived at the house the house was calm, and he was greeted politely by both the Plaintiff and his wife. The Plaintiff welcomed the officers inside to investigate the scene. Officer Jordan, who was partnered with Ruiz for the night, entered the apartment to interview the Plaintiff and Officer Ruiz asked Mrs. Redon, the Plaintiffs wife to step outside to conduct his interview. Before Officer Ruiz had a chance to begin his interview of Mrs. Redon, Officer Jordan asked for Ruiz's assistance inside the residence. Officer Ruiz entered the residence with Mrs. Redon in tow, and upon passing the kitchen area, Officer Jordan could be heard asking the Plaintiff to place his sleeping newborn on the bed. Mrs. Redon understanding that the adult bed was an unsafe place to leave the newborn unattended immediate exclaimed "no, no, I'll take her". Both officers nodded in agreement and the couple began to gently exchange the child. During the exchange Officer Jordan grabbed Plaintiff's wrist, ripping it away, nearly making plaintiff drop the child. Plaintiff was spun around and bent over, as Officer Ruiz kned Plaintiff in the chest and started yelling, "stop resisting". Plaintiff in an attempt to show the Officers he was submitting and posed no threat opened his hands and put his arms out to his side as he was stood up with an arm around his throat. Officer Jordan deployed a carotid choke, and quickly rendered Plaintiff unconscious. As Officer Jordan lowered Plaintiff to the ground to sit him in the recovery position, Officer Ruiz unholstered his department issued taser, and deployed the taser from point

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1 blank range into the Plaintiffs chest while he remain unconscious. Getting no reaction
2 from the unconscious man he then continued to tase the Plaintiff, redeploying the taser
3 to the Plaintiff's knee, in drive stun mode. Plaintiff after regaining consciousness was
4 dragged out side by Officer Jordan, and informed he was being arrested for PC 148(a)1
5 for refusing to put his child on the bed. Officer Ruiz then returned inside the residence
6 to interview Mrs. Redon and charged the Plaintiff with Domestic Violence and Child
7 Endangerment charges. Plaintiff was then placed in an ambulance and transported to
8 the ER to have the taser probes removed from his chest. Plaintiff was acquitted of these
9 charges at trial, and of resisting Officer Ruiz he charge being dismissed with prejudice
10 by the judge, after a hung Jury because of excessive force. Plaintiff has developed PTSD
11 symptoms related to this incident, and has developed significant anxiety and has
12 significantly changed his outlook on life, his love of country, and his personality.

13 While litigating this case Plaintiff was subsequently subpoenaed to testify 3 times
14 against the Defendant in criminal court as a character witness to testify to Ruiz's use of
15 force, failure to follow policies and procedures, and use of excessive force. As a result of
16 this intrusion into Plaintiff's personal life and the constant exposure to the Defendant
17 Plaintiff has developed significant anxiety and tremendous worry for his personal
18 freedom and safety.

DAMAGES

21 Plaintiff seeks damages for:

- 22 1. Deprivation of his constitutional right to be secure in his person against
23 unreasonable seizure.
- 24 2. Deprivation of his constitutional right to not be subjected to excessive force.
- 25 3. Punitive Damages to deter Andres Ruiz from continuing to use excessive force as
26 he has continued to use excessive force and falsify police information since 2011
27 during his continued employ at SDPD.

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4. Compensatory Damages for Lost Income, Medical Expenses, opportunity costs and actual costs.
5. Delay Damages
6. Severe pain, suffering, and fear for his life
7. Mental anguish and emotional distress
8. Impairment of Reputation
9. Grief
10. Anxiety
11. Physical Pain
12. Inconvenience
13. Mental Suffering
14. Loss of Enjoyment of Life
15. Humiliation and Emotional Distress

The liability of the defendant is predicated under a single remaining count of Plaintiffs complaint:

By PLAINTIFF against defendant RUIZ, for violation of 42 U.S.C . § 1983 for depriving the PLAINTIFF under the color of law his right to be secure from unreasonable search and seizure, and his right not to be subjected to excessive force and denying him equal protection under the law.

PERSONAL INJURY INFORMATION

Plaintiff, JASON REDON was a 32 year old male at the time of the incident on August 19th, 2017;

Plaintiff has suffered significant out-of-pocket losses as a result of this incident.

Plaintiff has incurred the costs of two medical visits and two ambulatory trips as a result of the incident.

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1 Plaintiff has suffered both physical and mental pain and suffering as a result of
2 this incident, as well as having his sense of peace and safety destroyed.

3 Plaintiff a former military service member has suffered the sense of loss of family,
4 and country. This loss has exacerbated and made treatment resistant his previous
5 existing and relatively mild PTSD. It has left him with a sense that he is stuck in a war
6 zone and under threat of attack at all times from domestic enemies of the constitution.

7 Defendant deprived plaintiff, under the color of law, (1) of his right to be secure
8 in his person against unreasonable seizure; and (2) of his right not to be subjected to
9 excessive force.

10 By using excessive force against the Plaintiff under the color of law, Defendant
11 deprived Plaintiff of his rights under the Fourth Amendment to the United States
12 Constitution.

13
14 Defendants liability is founded under 42 USC . § 1983 which provides that,

15
16 *"Every person who under the color of any statute, ordinance, regulation, custom*
17 *or usage, of any State... subjects, or causes to be subjected, any citizen of the*
18 *United States or other person within the jurisdiction thereof to the deprivation of*
19 *any rights privilege or immunities secured by the Constitution and laws, shall be*
20 *liable to the party injured in an action at law, suit in equity, or other proper*
21 *proceeding for redress"*

22
23 Defendants's use of excessive force on decedent is actionable under 1983. (*Monroe*
24 *v. Pape* (1961) 365 U.S. 167)

25
26 Plaintiff's is entitled to relief for physical and mental, both immediate and
27 ongoing pain and suffering, emotional distress and humiliation. (*Carey v. Piphus*, 435
28 U.S. 247, *Wright v. Sheppard*, 919 F.2d 665, *O'Neill v. Krzeminski*, 839 F.2d 9, 13)

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1
2 One of the most important purposes of 42 U.S.C . § 1983 is to deter future abuses
3 of power by persons acting under the color of law. (*City of Newport v Fact Concerts (1981)*
4 *453 U.S. 247, 191 S. Ct. 2748, 691 L. Ed. 2d 616*)

5
6 Defendant should be subject to punitive damages as his conduct was both
7 malicious and reckless; potentially endangering Plaintiff's life and has continued since
8 the incident..

9
10 Negligent Deprivations are actionable under . § 1983 (*Parratt v. Taylor, (1981) 451*
11 *U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420; First v. Gertzen (9th Cir., 1982) 676 F.2d 1252*)

12
13 Under Section 1983, individual liability lies where (1) the conduct complained of
14 was committed by a person acting under the color of state law and (2) the conduct
15 deprived a person of rights, privileges, or immunities secured by the Constitution of the
16 United States.

17 Here there is no dispute that Officer Ruiz's conduct was under the color of state
18 law.

19 The Primary issue for jury determination is wether the use of taser on Plaintiff
20 who was unconscious and who's only crime was a misdemeanor for refusing a different
21 Officers order to place his 4 month old daughter in a dangerous position was excessive
22 and unreasonable.

23 The secondary issue here for jury determination is wether Officer Ruiz's use of
24 his departmental issued X-26 Taser outside of departmental policies and procedures,
25 crossed the reasonableness threshold for excessive force under *Graham v. Connor* and if
26 it should also be considered excessive force; namely by tasing Plaintiff at point blank
27 range to the chest; a manner Officer Ruiz admitted he had recently been directed to
28 avoid and understood would most likely be lethal.

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The only crime Plaintiff was suspected of at the time of the officers use of force was PC 148(a)1, misdemeanor and there is little to justify the use of deadly force under these circumstances..

“Lethal or deadly force is force that a person uses causing, or that a person knows or should know would create a substantial risk of causing, death or serious bodily harm.” (US NAVY use of force policy, “Sociological and Criminological Theory: Brief of Theorists, Theories, and Terms,” July 2012, page 37).

Here, there is no factual dispute by Officer Ruiz, he has admitted to understanding he should refrain from tasing a suspect in the chest area at point blank range as it could cause cardiac arrest. If Officer Ruiz understood this level of force was potentially deadly then he necessarily violated Plaintiff’s Constitutional right to be free from unreasonable search and seizure with it usage.

A seizure made by a government official that is unreasonable under the circumstances thus violates a suspects 4th Amendment right and their right to equal protection under the 14th Amendment. An officer may never use deadly force to make the arrest of or to prevent the escape of a person who has committed a misdemeanor. Deadly force may never be used on mere suspicion . Deadly force may never be used by law enforcement officers to arrest or prevent the escape of a person who has committed a nonviolent felony.

It is well established that an Officer may never use lethal or deadly force simply to apprehend a person suspected of a misdemeanor

In Young vs. County of Los Angeles the appellate court stated:

“Our sister circuits have likewise concluded that misdemeanors are relatively minor and will generally not support the deployment of significant force. See, e.g., Fogarty v. Gallegos, 523 F.3d 1147, 1160 (10th Cir. 2008); Reese v. Herbert, 527 F.3d 1253, 1274 (11th Cir. 2008).”

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1 Motion In Limine to exclude Defendants Domestic Violence and Relationship conflict
2 expert.

3
4 Motion in Limine to exclude Defendants Cardiologist Medical Expert.

5
6 Motion in Limine to exclude Defendants Financial Expert.

7
8 Motion in Limine to exclude portions of the courts record provided to the defendant
9 from Plaintiff's criminal trial.

10
11 Motion in Limine to exclude Defendants use of force expert.

12
13 Motion in Mine to exclude any evidence or testimony pertaining to Plaintiff's appeal of
14 his conviction of PC 148(a)1 against wit Officer Jordan.

15
16 Motion in Limine to exclude any Domestic Violence related testimony or evidence.

17
18 Motion in Limine to exclude any records, video recordings, audio recordings, evidence
19 or reports generated by SDPD and its employees and/or agents as a result of
20 Defendants attempt to support erroneous claims that Plaintiff is dangerous or
21 threatening.

22
23 Motion in Limine to exclude testimony regarding Plaintiff's May 3rd, 2011 encounter
24 with Officer Jordan.

25
26 Motion in Limine to exclude defendant from presenting evidence of false claims by his
27 previous council, Brian Cline.

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1 Motion in Limine to exclude irrelevant testimony and evidence presented by
2 Defendants.

3
4 Motion in Limine to exclude any evidence presented by the Defendant that only seek to
5 confuse the triable issues of fact or allow Defendant to wage an ad hominem attack
6 against the Plaintiff..

7
8 Motion in Limine to exclude any evidence presented by the Defendant of any Facebook
9 posts marked "private" obtained by the City Attorney of San Diego, potentially through
10 social engineering or hacking.

11
12 I certify under penalty of perjury that the aforementioned is true under penalty of
13 perjury.

14
15
16
17
18 Respectfully submitted,

19
20
21 

22 Jason A. Redon

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24 Friday, August 11, 2017